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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,869	04/19/2001	Rob Pieterse	01176/LH	6265

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EXAMINER	
FISH, JAMIESON W	
ART UNIT	**PAPER NUMBER**
2617	

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/807,869	PIETERSE, ROB	
	Examiner	Art Unit	
	Jamieson W. Fish	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims **1-8** have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

Applicant is advised that should claims **1-4** be found allowable, claims **5-8** will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims **1, 5** are rejected under 35 U.S.C. 102(e) as being anticipated by DeMartin et al (US 6,226,672).

3. Regarding claims **1** and **5**, DeMartin teaches a system for the distribution of audio and video files, comprising a central database with audio or video files, local

processing means for processing and playing of the audio and video files (See Fig. 1 Fig. 3 and Col. 3 lines 44-Col. 4 lines 36, Col. 6 lines 11-20 (20) is local processing means, Expert 24 or another user is a central database); a transmission network for the transmission of the audio or video files from the central database to the local processing means (See Fig. 1 Fig. 3 and Col. 3 lines 44-Col. 4 lines 36, Col. 6 lines 11-20 Internet (10) is a network); a processor for selecting a collection of files from the database by means of a selection algorithm and storing that selection in a selection file, as well as for transferring, via the transmission network to the local processing means of a subscriber, replicas of both the selection file and the selected files themselves, the local processing means playing the selected files via playing means, under control of the selection file (See Col. 5 lines 17-51 Script file controls the playing of the files. Actual files can be transmitted across the network Col. 6 lines 35-52).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims **2-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over DeMartin in view of Payton (US 5,790,935).

5. Regarding claim **2** and **6,** DeMartin fails to disclose a system wherein the processor periodically replaces, under control of a refreshing algorithm, part of the collection of selected files by files which are selected once again from the database. In

a similar endeavor Payton teaches a system wherein the processor periodically replaces, under control of a refreshing algorithm, part of the collection of selected files by files which are selected once again from the database (See Col. 6 lines 51-67, Col. 7 lines 1-12). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify DeMartin so that the processor periodically replaces, under control of a refreshing algorithm, part of the collection of selected files by files which are selected once again from the database as taught by Payton to provide the user with new content.

6. Regarding claim **3** and **7**, DeMartin fails to disclose wherein the processor selects, on the basis of one or more selection algorithms, different collections of files and stores these selections in different selection files, which are transferred to the local processing means via the transmission network, the local processing means comprising a local selection device for selecting, according to the desire of the subscriber, one of those different selection files. In a similar endeavor, Payton teaches a system wherein the processor selects, on the basis of one or more selection algorithms, different collections of files and stores these selections in different selection files, which are transferred to the local processing means via the transmission network (See Col. 6 lines 26-31 The user has a list of recommended items and a list of other items), the local processing means comprising a local selection device for selecting, according to the desire of the subscriber, one of those different selection files (See Col. 6 lines 26-31 There is a list of recommended items and a list of other available items). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made

to modify DeMartin so that the processor selects, on the basis of one or more selection algorithms, different collections of files and stores these selections in different selection files, which are transferred to the local processing means via the transmission network, the local processing means comprising a local selection device for selecting, according to the desire of the subscriber, one of those different selection files to give the subscriber different content options.

7. Regarding claim **4** and **8**, DeMartin fails to disclose wherein the local selection device stores consecutive choices made by the subscriber, in a log file, the processor reading out the selections stored in the local selection device and periodically replacing part of the collection of selected files by files selected once again from the database. In a similar endeavor, Payton teaches the system wherein the local selection device stores consecutive choices made by the subscriber, in a log file, the processor reading out the selections stored in the local selection device and periodically replacing part of the collection of selected files by files selected once again from the database (See Col. 6 lines 40-67, Col. 7 lines 1-12 User profiles which include information about which items were used are sent to the central distribution server this information is used to send a user an updated list). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify DeMartin to have a log file so that the expert would have more information when making the play list.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamieson W. Fish whose telephone number is 571-272-7307. The examiner can normally be reached on Monday-Friday, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JF 12-20-2005

CHRIS KELLEY
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